

## § 20.2056(b)-8

## 26 CFR Ch. I (4-1-04 Edition)

amount of property that (assuming a 10 percent interest rate) would yield an income to S of \$70,000 a year (\$700,000).

**Example 13. Pooled income fund.** D's will provides for a bequest of \$200,000 to a pooled income fund described in section 642(c)(5), designating S as the income beneficiary for life. If D's executor elects to treat the entire \$200,000 as qualified terminable interest property, the deductible interest is \$200,000.

**Example 14. Funding severed QTIP trusts.** D's will established a trust satisfying the requirements of section 2056(b)(7). Pursuant to the authority in D's will and § 20.2056(b)-7(b)(2)(ii), D's executor indicates on the Federal estate tax return that an election under section 2056(b)(7) is being made with respect to 50 percent of the trust, and that the trust will subsequently be divided to reflect the partial election on the basis of the fair market value of the property at the time of the division. D's executor funds the trust at the end of the period of estate administration. At that time, the property available to fund the trusts consists of 100 shares of X Corporation stock with a current value of \$400,000 and 200 shares of Y Corporation stock with a current value of \$400,000. D may fund each trust with the stock of either or both corporations, in any combination, provided that the aggregate value of the stock allocated to each trust is \$400,000.

[T.D. 8522, 59 FR 9651, Mar. 1, 1994, as amended by T.D. 8779, 63 FR 44393, Aug. 19, 1998; T.D. 9102, 69 FR 21, Jan. 2, 2004]

### § 20.2056(b)-8 Special rule for charitable remainder trusts.

(a) *In general*—(1) *Surviving spouse only noncharitable beneficiary.* With respect to estates of decedents dying after December 31, 1981, subject to section 2056(d), if the surviving spouse of the decedent is the only noncharitable beneficiary of a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 (qualified charitable remainder trust), section 2056(b)(1) does not apply to the interest in the trust that is transferred to the surviving spouse. Thus, the value of the annuity or unitrust interest passing to the spouse qualifies for a marital deduction under section 2056(b)(8) and the value of the remainder interest qualifies for a charitable deduction under section 2055. If an interest in property qualifies for a marital deduction under section 2056(b)(8), no election may be made with respect to the property under section 2056(b)(7). For purposes of this section, the term *non-charitable beneficiary* means any

beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

(2) *Interest for life or term of years.* The surviving spouse's interest need not be an interest for life to qualify for a marital deduction under section 2056(b)(8). However, for purposes of section 664, an annuity or unitrust interest payable to the spouse for a term of years cannot be payable for a term that exceeds 20 years.

(3) *Payment of state death taxes.* A deduction is allowed under section 2056(b)(8) even if the transfer to the surviving spouse is conditioned on the spouse's payment of state death taxes, if any, attributable to the qualified charitable remainder trust. See § 20.2056(b)-4(c) for the effect of such a condition on the amount of the deduction allowable.

(b) *Charitable remainder trusts where the surviving spouse is not the only non-charitable beneficiary.* In the case of a charitable remainder trust where the decedent's spouse is not the only non-charitable beneficiary (for example, where the noncharitable interest is payable to the decedent's spouse for life and then to another individual for life), the qualification of the interest as qualified terminable interest property is determined solely under section 2056(b)(7) and not under section 2056(b)(8). Accordingly, if the decedent died on or before October 24, 1992, or the trust otherwise comes within the purview of the transitional rules contained in § 20.2056(b)-7(e)(5), the spousal annuity or unitrust interest may qualify under § 20.2056(b)-(7)(e) as a qualifying income interest for life.

[T.D. 8522, 59 FR 9653, Mar. 1, 1994]

### § 20.2056(b)-9 Denial of double deduction.

The value of an interest in property may not be deducted for Federal estate tax purposes more than once with respect to the same decedent. For example, where a decedent transfers a life estate in a farm to the spouse with a remainder to charity, the entire property is, pursuant to the executor's election under section 2056(b)(7), treated as passing to the spouse. The entire value of the property qualifies for the marital deduction. No part of the value of